

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of	:	
	:	
Schools and Libraries Universal	:	
Service Support Mechanism	:	CC Docket No. 02-6
	:	
	:	FCC 04-190

To the Commission:

**COMMENTS ON PETITION FOR RECONSIDERATION OF REQUIREMENTS ESTABLISHED IN THE
SCHOOLS AND LIBRARIES FIFTH REPORT AND ORDER**

Hispanic Information and Telecommunications Network, Inc. (“HITN”), by its attorneys, and pursuant to 47 C.F.R. §1.415, 1,419, hereby files comments in response to the Petitions for Reconsideration of Sprint Corporation (“Sprint”) and Bell South Corporation (“Bellsouth”), filed October 13, 2004, in the above-referenced proceeding.

HITN, founded in 1981, is a 501(c)(3) non-profit educational organization dedicated to improving the lives of Hispanic Americans by using advanced telecommunications technologies to bring educational programming, Internet access and wireless communications to underserved communities. HITNet, a satellite-based broadband service delivered via HITN’s state-of-the-art satellite platform at the Brooklyn Navy Yard, NY, is currently providing E-Rate Internet access to the most underprivileged schools and libraries throughout Puerto Rico. As a participant in the E-Rate program since its inception, HITN has a vested interest in the outcome of this proceeding.

I. SERVICE PROVIDERS SHOULD NOT BE RESPONSIBLE FOR NON-PAYMENT OF THE NON-DISCOUNTED “LOCAL SHARE”

In its Fifth Report and Order, the Commission concluded that if an E-Rate beneficiary has not paid its non-discounted E-Rate share within 90 days of the service delivery date, all funds disbursed to the service provider should be recovered.¹ HITN, like Sprint and Bellsouth, vigorously opposes retroactively applying this measure. It is unfair to the service providers to be collection agents in addition to providing E-Rate services to these schools. There has never been a clear regulatory requirement for a service provider to pay the applicant’s non-discount local share. The rules expressly forbid a service provider from covering any part of the applicant’s required portion of the contract price. Further, service providers cannot be found to have violated a rule that specifically requires an applicant to pay its local share when the applicant fails to pay the service provider. It is the service provider who is harmed in this instance, and the SLD should solely be pursuing the applicant for any program rule violation it perceives unless there is clear evidence that the service provider forgave the requirement for payment by the applicant of the local share.

HITN suggests that if an applicant fails to pay its local share in one E-Rate year, their participation should be barred in future years until the debt is paid. This policy can prevent the bad faith, kickbacks, and collusion the E-Rate program has apparently experienced as of late.

Service providers should not be waiting on pins and needles for an applicant to pay its local share within 90 days of service—the SLD funding decisions sometimes take more than 2 years between submission of an invoice and receipt of payment. In the E-Rate program, 90 days is a very short amount of time to require payment.

¹ Fifth Report and Order, released August 13, 2004, FCC 04-190, para. 24.

Further, the Commission arbitrarily chose the 90-day window without asking for comment on the rule. This type of retroactive, ex post facto approach would be viewed as arbitrary and capricious in any government program. This decision must be rescinded, and comment must be allowed from the E-Rate community as to what a reasonable payment date is. Rules based on those comments should be imposed only prospectively. Service providers who operate in good faith, make reasonable efforts to collect local share and are not participating in a conspiracy to violate the E-Rate rules should not be punished for extending service to those in the greatest need and complying with the rules as they existed at the time service was provided. As it now stands, this rule also fails to reflect common service provider billing practices and USAC payment procedures.


Finally, HITN is in a unique position, providing E-Rate services to the only Spanish-speaking jurisdiction in the United States. This language barrier, in addition to the additional time it takes for the mail system to reach Puerto Rico, makes the 90-day window almost impossible from a logistics standpoint.

II. CONCLUSION

HITN respectfully requests that the Commission clarify and modify its Rules and policies in accordance with the discussion set forth herein.

Respectfully submitted,

HISPANIC INFORMATION AND
TELECOMMUNICATIONS NETWORK

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